

## MEMORANDUM OF UNDERSTANDING

Inasmuch as electronic tax filing benefits the State of California and taxpayers by providing convenience, efficiency and cost savings in the administration of tax laws; and the Franchise Tax Board is committed to maximizing the use of electronic filing; and in an effort to maximize the use of electronic filing, the California State Controller and Chair of the Franchise Tax Board, Kathleen Connell, facilitated a cooperative discussion between representatives of private industry and representatives of the Franchise Tax Board staff for the purpose of identifying a process that will maximize the use of electronic filing for taxpayers using California 540 2EZ form. The representatives participating in this March 12, 2002, discussion are signatories to this Memorandum of Understanding and by signing this Memorandum of Understanding agree to implementation by the Franchise Tax Board and its staff, of the process described herein.

Now, therefore, in consideration of the Franchise Tax Board's issuing direction to its staff to implement this Memorandum of Understanding and for the purpose of agreeing to the deployment of an electronic version of the California 540 2EZ, the parties set forth below accept the following objectives for the form.

The form shall:

- Provide a convenient electronic method for filers to transmit tax data
- Not provide arithmetic calculations or tax table look-up features
- Be free to use
- Provide an appropriate level of privacy; minimize risk of disclosure of data to third parties; disclose to filers, prior to use, all risks inherent in the use of the electronic form and process; and procedurally preclude government monitoring of draft returns or key strokes
- Provide secure transmission of data using 128-bit secure socket layer encryption
- Provide for acknowledgment of successful transmission and receipt of complete data by the Franchise Tax Board

The parties further agree that one of the following solutions will be, subject to Franchise Tax Board approval, implemented to meet the objectives above:

- A) Download the California 540 2EZ form for offline preparation and subsequent transmission to the Franchise Tax Board. A prototype solution, involving the downloading of a graphic California 540 2EZ form using free Adobe (.pdf) form utility software, was demonstrated to interested parties on March 12, 2002. As demonstrated to the group in attendance, this approach would work as follows: A taxpayer would obtain a copy of the California 540 2EZ form from the Franchise Tax Board web

site or from other third party web sites. The form would be downloaded using free Adobe software and then filled in offline on the taxpayer's computer, or a public access Internet terminal. Upon completion of the filled-in form, a taxpayer would initiate a process specific to the downloaded form that transforms the taxpayer-entered data into a format to be transmitted directly and securely to the Franchise Tax Board's Direct Filing Portal using the taxpayer's Internet connection and 128-bit secure socket layer encryption. The Franchise Tax Board would present the taxpayer with an acknowledgment of filing. At any point in the process, the taxpayer would have the option to print a copy for record-keeping purposes. While questions about the limitations of Adobe software were raised at the March 12 demonstration about the downloaded form approach, it was generally agreed that the issues could be resolved technically, or be otherwise remediated through property risk disclosures to filers.

- B) Create a clearinghouse to further the public interest by routing California 540 2EZ filers to commercial sector, philanthropic and other web sites. The parties agree that a variety of viewpoints from the commercial e-file industry exist with regard to the terms and conditions that would apply to the hosting and operation of a clearinghouse. The system developed to implement this process would forward the information provided by filers to the Franchise Tax Board on a timely basis (to be defined) and will present the data in a format compatible with the Franchise Tax Board's systems.

The parties agree that either alternative can be successfully deployed. This Memorandum of Understanding is for the sole purpose of memorializing the recommendations made by the parties present. This Memorandum of Understanding does not imply or constitute any contract for services or products or arrangement for payment or other consideration by the Franchise Tax Board to any of the private sector signatories to this agreement. This Memorandum is subject to ratification by vote of the three-member Franchise Tax Board.

FileYourTaxes.com

Date: 3-25-02

By: Atila Taluy

H&amp;R Block

Date: 3-25-02

By: Robert Weinberger

IBM

Date: March 19, 2002

By: John Allen

Intuit

Date: 3-25-02

By: Bernie McKay

California Taxpayers Association

Date: 3-25-02

By: Greg Turner

Computer &amp; Communications Industry Association

Date: 3-25-02

By: Scott Baugh

**Consumer Federation of America**  
1424 16<sup>th</sup> St. NW, Suite 604, Washington, DC 20036  
**Consumers Union**  
1666 Connecticut Avenue NW, Suite 310, Washington, DC 20009  
**National Consumer Law Center**  
77 Summer Street, 10<sup>th</sup> Floor, Boston, MA 02110  
**U. S. Public Interest Research Group**  
218 D Street SE, Washington, DC 20003

September 4, 2002

Mr. Paul J. Mamo  
Internal Revenue Service  
1111 Constitution Avenue, Room 2403  
Washington, DC 20224

Re: "Electronic Tax Preparation and Filing; Intent to Enter Agreement"  
Federal Register August 8, 2002

Dear Mr. Mamo:

Consumer Federation of America, Consumers Union, the National Consumer Law Center (on behalf of its low-income clients), and U. S. Public Interest Research Group file these comments concerning the Internal Revenue Services' proposed Agreement to provide free services for online tax preparation and filing services.<sup>1</sup> The IRS has proposed to enter into an agreement with a Consortium of commercial companies to provide free online tax filing for up to 60 percent of taxpayers through a link from the IRS.gov website to the Consortium companies, instead of providing free e-filing capability directly from the government to taxpayers.

We believe that the proposed Agreement is seriously deficient and does not protect the interests of taxpayers, especially low-income taxpayers. Instead of entering into this Agreement, which is of limited benefit and exposes taxpayers to the risks of usurious tax refund loans, we urge the IRS to provide e-filing on its own website. We also urge the IRS to provide more free tax preparation services to low-income taxpayers. In the alternative, the IRS should amend this proposed Agreement to remedy the gaps described in this letter and to widen the circle of groups involved to include representatives to low-income taxpayers and consumer organizations.

### **The IRS Should Provide On-Line Filing on Its Own Website**

The Consortium project is offered as a substitute for the IRS providing free online tax preparation and filing capability directly to taxpayers. The IRS does not allow consumers to file

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<sup>1</sup> 67 Fed. Reg. 51621 (August 8, 2002)



their taxes on-line in an age where some state tax agencies allow taxpayers to file online (e.g. Massachusetts). In addition, consumers can file applications on-line with a number of other federal and state government agencies, such as the Social Security Administration (Social Security benefits), the Department of Education (college financial aid), and some state Department of Motor Vehicles (for replacement for drivers license). And of course, there are literally hundreds if not thousands of private entities that permit on-line filing.

Instead of providing on-line filing like other government agencies, the IRS has chosen to provide free on-line filings to only a portion of those it is supposed to serve. Furthermore, the IRS has chosen to meet this need by exposing taxpayers to the risks of costly ancillary services, such as refunds anticipation loans, fees for personal assistance, or padded prices for state tax return preparation services.

### **The Proposed Agreement is Unlikely to Provide Substantial Benefit To Low-Income Taxpayers**

This proposed Agreement is unlikely to benefit the working poor who now go to commercial tax preparers for help in filing for EITC benefits and other tax credits. The major obstacle for low-income taxpayers is not lack of free e-filing, but lack of free preparation for more complex EITC forms. The National Taxpayer Advocate's FY 2002 Report notes that only 113,000 of the 17 million low-income taxpayers eligible for the EITC in 1998 were served by free tax preparation services.<sup>2</sup> Furthermore, EITC-eligible taxpayers have the most need of tax preparation services, because of the complexity of the EITC forms and the limited education/literacy of this population.<sup>3</sup> Because there are so few free community tax preparation services, many of these low-income taxpayers are forced to turn to the often-expensive services of paid preparers. It is also the lack of free tax preparation services, combined with the fact that many of these consumers do not have the cash up front to pay for paid services, that forces them to take out RALs to finance the services.

The proposed Agreement will not help alleviate this problem for several reasons. As a preliminary matter, it is unclear whether both online tax preparation and electronic filing will be free to consumers who use the proposed Consortium service. The Federal Register notice states as an objective: "Seeking to assure access to a free and secure electronic preparation and filing option for additional taxpayers, building upon free electronic tax preparation and filing provided in the commercial market today."<sup>4</sup> This implies that both online tax preparation software and electronic filing will be free to consumers. However, the press release announcing this initiative from the Office of Management and Budget states "78 million will no longer have to pay to file their tax returns online. Currently, taxpayers who choose to file online can pay an average of \$12.50 in filing fees in addition to the cost of purchasing tax preparation software."<sup>5</sup> This implies that only free on-line filing will be available.

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<sup>2</sup> National Taxpayer Advocate, FY 2001 Annual Report to Congress, December 31, 2001, at 51.

<sup>3</sup> Michael O'Connor, *Tax Preparation Services for Low Income Filers*, 90 Tax Notes 231, January 8, 2001.

<sup>4</sup> 67 Fed. Reg. at 51,621.

<sup>5</sup> Office of Management and Budget, Press release, July 31, 2002.

Even if the proposed Agreement does include free on-line tax preparation, there is no requirement that the Consortium serve the neediest of consumers. The proposed Agreement calls for each tax preparation company and software publisher in the Consortium to offer free services to at least 10 percent of the taxpayers each serves, but it does not specify which groups of taxpayers should receive free service. The proposed Agreement does not spell out who will be eligible for free online tax preparation versus only free electronic filing. There is no requirement that Earned Income Tax Credit recipients must be included in the 10% each company will serve or that EITC forms must be included in the online tax preparation service offered by all participating companies.

Moreover, the proposed Agreement will face the barrier of the digital divide for low-income taxpayers. Many taxpayers will be unable to take advantage of free online tax preparation or filing because of lack of Internet access. A recent report by the Electronic Tax Administration Advisory Committee acknowledges this fact.<sup>6</sup> Thus, even if the Agreement does include online preparation, that will do little good for many taxpayers, since 49% of households do not have Internet access at home.<sup>7</sup> Furthermore, approximately 46% of taxpayers do not use the Internet anywhere.<sup>8</sup> The situation is even worse for low-income taxpayers. Only 25% of taxpayers who earn under \$15,000 use the Internet.<sup>9</sup> Only 33% of the next income level, working poor taxpayers who make \$15,000 to \$25,000, use the Internet.<sup>10</sup>

Finally, the proposed Agreement does not address the lack of access to bank accounts needed to speed refunds. The ETAA Report notes that one of the incentives to encourage e-filing is expedited refunds.<sup>11</sup> To receive fast refunds when taxes are filed electronically, taxpayers must have a bank account into which refunds can be deposited. Yet, nowhere does the proposed Agreement or the ETAA Report consider the 10 million unbanked customers, many of whom are EITC recipients. Adding a Treasury-provided bank account to receive electronically delivered tax refunds would address this.

### **The Proposed Agreement Will Put More Taxpayers At Risk for Costly Services, such as Refund Anticipation Loans (RALs), Padded Fees for State Tax Return Preparation, and Fees for Personal Assistance.**

This proposed Agreement is unlikely to assist consumers without exposing many customers to high-priced ancillary products and services, such as refund anticipation loans (RALs). These are triple-digit interest small loans made by banks and currently marketed to low-income consumers through commercial tax preparation companies. These are high risk, high cost loans that bleed hundreds of millions from low-income taxpayers and the EITC

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<sup>6</sup> Electronic Tax Administration Advisory Committee, 2002 Report to Congress (June 30, 2002) (“ETAA Report”), at 11.

<sup>7</sup> U.S. Dep’t of Commerce, Econ. & Statistics Admin. and Nat’l Telecomm. & Info. Admin., A Nation Online: How Americans are Expanding Their Use of the Internet (Feb. 2002) at 5, available at <http://www.ntia.doc.gov>.

<sup>8</sup> Id. at 8.

<sup>9</sup> Id. at 28.

<sup>10</sup> Id.

<sup>11</sup> ETAA Report at 2.

program. The numerous problems with RALS have been documented by not only consumer groups, but the Brookings Institution.<sup>12</sup>

For those taxpayers who do have Internet access and use the proposed free services, they will become prime audiences for solicitations and advertisements for RALs. The IRS intends to provide a direct link on its website to commercial tax preparation companies, implying an endorsement of these companies, without sufficient safeguards to protect consumers. The IRS appears more interested in meeting the Congressional mandate for 80% electronic filing by 2007 than it is in serving the best interests of taxpayers who most need access to free tax preparation services and e-filing. Taxpayers need to be able receive their refunds and tax credits quickly without becoming trapped in usurious loans.

For years, IRS's e-filing program had the effect of encouraging the RAL industry. The proposed Agreement will drive even more taxpayers into the arms of paid preparers, where they will become a captive audience for refund anticipation loans. According to the ETAA Report, the IRS efforts are aimed at encouraging the 30 million taxpayers who now prepare their own returns by hand and file them on paper to file electronically using the proposed Consortium companies' "free" services.<sup>13</sup> These are taxpayers who currently do not pay commercial tax preparers to complete their returns and are unlikely to now be RAL customers.

How will Consortium members recoup lost revenue from providing "free" electronic tax filing for millions of taxpayers? The ETAA Report notes that "tax preparation companies may realize significant client development benefits from providing free Internet access in their offices."<sup>14</sup> Nothing in the proposed Agreement prevents commercial tax preparers from marking up or "padding" the price for preparing state tax returns. They are also free to charge fees for providing "personal" customer assistance to taxpayers who use the "free" service.

Some software companies already package RALs with their tax preparation programs.<sup>15</sup> Even taxpayers without Internet access will be at risk of RALs. It would be all too easy for the paid preparers, who make tens of millions of dollars from RALs, to encourage these taxpayers to "come into our office for free e-filing if you don't have Internet access." At the paid preparer's office, the taxpayer will be subject to a high-pressure, face-to-face sales pitch for RALs.

The proposed Agreement does not provide adequate protection against cross-marketing of high priced services or predatory small loans to consumers. The Federal Register notice merely notes that "Consortium Participants shall also agree that provisions of Free Services shall not be conditioned on obtaining an eligible taxpayer's consent to solicitations of additional business."<sup>16</sup> This provision simply prohibits tying of additional services to free tax filing. The

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<sup>12</sup> Chi Chi Wu, Jean Ann Fox, and Elizabeth Renuart, "Tax Preparers Peddle High Priced Tax Refund Loans: Millions Skimmed from the Working Poor and the U. S. Treasury" Consumer Federation of America and National Consumer Law Center, January 31, 2002, available at [www.consumerlaw.org](http://www.consumerlaw.org); Alan Berube, et al., "The Price of Paying Taxes: How Tax Preparation and Refund Loan Fees Erode the Benefits of the EITC," Brookings Institution and Progressive Policy Institute, May 2002, available at [www.brookings.org](http://www.brookings.org).

<sup>13</sup> ETAA Report at 2.

<sup>14</sup> *Id.* at 11.

<sup>15</sup> NCLC/CFA Report at 15.

<sup>16</sup> 67 Fed. Reg. at 51,622.

IRS should go further to explicitly prohibit Consortium members from offering or selling RALs to taxpayers receiving free service, padding fees for other services, or charging for personal assistance.

**Recommendations:**

1. The IRS should scuttle the proposed Agreement with the Consortium and offer free electronic tax filing capability at the IRS web site directly. In addition, the IRS should provide more free tax preparation assistance for low and moderate income consumers, especially those who receive the Earned Income Tax Credit and other credits.
2. If the IRS proceeds with the proposed Agreement with the Consortium, it should provide unequivocally that paid preparers are forbidden to make or facilitate RALs to taxpayers who are being provided benefits under this program. There should be no extra charges for personal assistance. The price of also preparing state tax returns must be clearly disclosed and must not be “padded”.
3. EITC-eligible taxpayers must be included in the 10% of customers served by all Consortium members.
4. The IRS must make provisions in the Agreement to require preparers to provide bank account options to taxpayers without bank accounts. The Department of Treasury, which the IRS is a part of, has spent much effort to encourage unbanked consumers to open bank accounts. The IRS should get on this bandwagon and use the proposed program to encourage the same.
5. The IRS should ensure that taxpayers who don’t have a computer or Internet access will not be forced to go through a paid preparer, and will be served by this program through free community tax preparation programs.
6. The Consortium that will oversee this program should include taxpayer representatives.

Sincerely,

Jean Ann Fox  
Consumer Federation of America

Chi Chi Wu  
National Consumer Law Center

Frank Torres  
Consumers Union

Edmund Mierzwinski  
U. S. Public Interest Research Group



Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG-253578-96, Health Insurance Portability for Group Health Plans; and temporary regulation (TD 8716) Interim Rules for Health Insurance Portability for Group Health Plans (§§ 54.9801-3T, 54.9801-4T, 54.9801-5T, and 54.9801-6T).

**DATES:** Written comments should be received on or before October 7, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of regulations should be directed to Carol Savage, (202) 622-3945, or through the internet

(CAROL.A.SAVAGE@irs.gov.), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:** Title: Notice of Proposed Rulemaking, Health Insurance Portability for Group Health Plans, and temporary regulation, Interim Rules for Health Insurance Portability for Group Health Plans.

*OMB Number:* 1545-1537.

*Regulation Project Number:* REG-253578-96.

*Abstract:* These regulations contain rules governing access, portability, and renewability requirements for group health plans and issuers of health insurance coverage offered in connection with a group health plan. The regulations also provide guidance for group health plans and the employers maintaining them regarding requirements imposed on plans relating to preexisting condition exclusions, discrimination based on health status, and access to coverage.

*Current Actions:* There is no change to these existing regulations.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, not-for-profit institutions, and state, local, or tribal governments.

*Estimated Number of Respondents:* 1,300,000.

*Estimated Time Per Respondent:* Varies.

*Estimated Total Annual Burden Hours:* 591,561.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 2, 2002.

**Carol Savage,**

*Program Analyst.*

[FR Doc. 02-20116 Filed 8-7-02; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### **Electronic Tax Preparation and Filing; Intent to Enter Agreement, Opportunity for Comment, Opportunity to Submit Proposals for Additional Consortia**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Advance notice of intent to enter an agreement, opportunity for comment, opportunity to submit proposals for additional consortia.

**SUMMARY:** The Internal Revenue Service (IRS) proposes to enter into an agreement (the Agreement) with a consortium of companies in the electronic tax preparation and filing industry (the Consortium) who together desire to work together to offer free, online tax return preparation and filing services to taxpayers (Free Services). The Consortium will offer these Free Services to taxpayers. The IRS will provide taxpayers with links to the Free

Services offered by the Consortium participants through a web page that will be hosted at irs.gov with links from firstgov.gov. These links to the Consortium will replace the current heading on IRS.gov for "Free Internet Filing Opportunities". Under the Agreement and during its term, the IRS will not compete with the Consortium in providing free, online tax return preparation and filing services to taxpayers. The IRS is soliciting comments on this proposed Agreement and complimentary or competitive offers from alternative consortia to provide Free Services to taxpayers. During this process other Federal agencies will be consulted.

**DATES:** Comments or proposals must be submitted by September 4, 2002.

**ADDRESSES:** Send letters with comments and suggestions on the proposed Agreement, or other proposals, to Paul J. Mamo, 1111 Constitution Avenue, Room 2403, Washington DC. 20224 or to the IRS Internet address: [WLEGOVPO@irs.gov](mailto:WLEGOVPO@irs.gov).

**SUPPLEMENTARY INFORMATION:** The IRS plans to enter into an Agreement (the Agreement) with the Consortium to accomplish the following five objectives:

1. Seek to assure access to a free and secure electronic preparation and filing option for additional taxpayers, building upon free electronic tax preparation and filing provided in the commercial market today;
2. Making tax return preparation and filing easier and reducing the burden on individual taxpayers;
3. Supporting the IRS's statutory goals of increased e-filing, pursuant to the IRS Restructuring and Reform Act of 1998, which encouraged the IRS to set a goal of having 80% of Federal tax and information returns filed electronically by the year 2007;
4. Providing greater service and access to taxpayers; and
5. Implementing one of the proposals in the President's FY'03 budget, specifically to encourage further growth in electronic filing by providing taxpayers the option to file their tax return on-line without charge using cooperation with, and encouraging competition within, the private sector to increase e-filing.

The anticipated essential terms of the Agreement are established in a document described as a Term Sheet. This draft Term Sheet follows.

Dated: July 31, 2002.

**Terence H. Lutes,**

*Director, IRS Electronic Tax Administration.*

## July 30, 2002 Draft

### Free On-Line Electronic Tax Filing Agreement

#### Term Sheet

#### I. Purpose

The purpose of this term sheet is to describe the essential terms of an agreement ("the Agreement"). The Agreement will provide for free, online tax return preparation and filing to individual taxpayers, thereby meeting the following five objectives:

1. Seeking to assure access to a free and secure electronic preparation and filing option for additional taxpayers, building upon free electronic tax preparation and filing provided in the commercial market today;

2. Making tax return preparation and filing easier and reducing the burden on individual taxpayers;

3. Supporting the IRS's statutory goals of increased e-filing, pursuant to the IRS Restructuring and Reform Act of 1998, which encouraged the IRS to set a goal of having 80% of Federal tax and information returns filed electronically by the year 2007;

4. Providing greater service and access to taxpayers; and

5. Implementing one of the proposals in the President's FY'03 budget, specifically to encourage further growth in electronic filing by providing taxpayers the option to file their tax return on-line without charge, using cooperation with, and encouraging competition within, the private sector to increase e-filing.

#### II. Summary

To accomplish the above objectives, the Internal Revenue Service (the "IRS") and a consortium of companies in the electronic tax preparation and filing industry (the "Consortium") (together, "the Parties") desire to work together to offer free, online tax return preparation and filing services to taxpayers ("Free Services"). The Consortium will offer Free Services to taxpayers at no cost. The IRS will provide taxpayers with links to the Free Services offered by the Consortium participants through a web page (described more fully in VI below; hereafter, the "Web Page"), which will be hosted at [irs.gov](http://irs.gov) accessible through [firstgov.gov](http://firstgov.gov). During the term of the Agreement, the IRS will not compete with the Consortium in providing free, online tax return preparation and filing services to taxpayers.

The Agreement is the best method (business case) for meeting the above

stated objectives because it will promote higher quality Services by utilizing the existing expertise of the private sector, maximize consumer choice, promote competition for such Services, and thereby meet the objectives in the least costly manner.

#### III. Consortium

The Consortium is intended to be part of an existing, non-profit corporation (under the provisions of 26 U.S.C. § 501(c)(3)) affiliated with The Council for Electronic Revenue Communication Advancement (CERCA). The Consortium is being formed to facilitate participation in the Agreement by commercial entities ("Consortium Participants") engaged in the business of electronic tax preparation and filing.

#### IV. Scope of Offerings

A. The Consortium will offer Free Services for eligible taxpayers (taxpayers meeting the qualifications for free offerings) from individual commercial sites. Such offerings, when taken in the aggregate, are intended to provide for Free Services to be available to 60% or more of taxpayers. If at any point the Consortium's aggregate offerings of Free Services are available to fewer than 60 % of taxpayers, the IRS may notify the Consortium of that fact. After receipt of such notice, the Consortium will have six months within which to raise the availability of such offerings to at least 60% of taxpayers. If the Consortium fails to achieve 60% within such six-month period, the IRS may terminate the Agreement. In making this decision, the IRS agrees to take into account the extent to which actual usage of Free Services has increased. Consortium offerings, taken together, will provide eligible taxpayers with a reasonable assurance that: (1) Free Services will be available on demand, and (2) these services will provide the ability to file the same federal tax forms which are fileable and available in the comparable paid online services offered by a selected Consortium member.

B. The Consortium shall accept offerings only from entities that:

1. Provide electronic, on-line tax preparation and filing of individual income tax returns;

1. Will offer and can provide Free Services to a number of individual taxpayers which equals or exceeds 10 percent (10%) of the number of individual income tax returns filed in the base year (CY 2001).

3. Offer online software approved by the IRS that generates returns that can be sent to the IRS via an IRS-approved channel.

4. Are Authorized IRS E-File Providers in accord with IRS Rev. Proc. 2000-31.

5. Are in compliance with applicable law, including but not limited to, Department of Treasury/IRS rules, including but not limited to 31 C.F.R. Part 10, IRS Rev. Proc. 2000-31, current versions of IRS Publications 1345 and 1345-A, and 26 U.S.C. § 7216.

6. Demonstrate the competence and capability to deliver their free offerings. This competence and capability may be demonstrated either by providing evidence of prior experience in providing on-line or electronic filing services or by self-certification. Such self-certification shall be reasonably and objectively determined by the Consortium, taking into account the above referenced need for competence and capability and the intent of the Agreement to avoid unnecessary barriers to entry. Consortium Participants must have adequate capacity to meet the expected demand for their Free Services. In addition to initial Participants, the Consortium will accept later qualified applicants as Consortium Participants.

7. Have security certification, from a third party agreed to by the IRS. It is understood that the Agreement will contain the names of acceptable third-party certifiers.

8. Comply with the privacy provisions of 26 U.S.C. § 7216. Have privacy certification from a third party agreed to by the IRS. Consortium participants are encouraged to use software that will enable their websites to state their privacy practices in a standard machine readable format that can be retrieved automatically and interpreted easily by users. Consortium Participants shall also agree that provisions of Free Services shall not be conditioned on obtaining an eligible taxpayer's consent to solicitations of additional business. It is understood that the Agreement will contain the names of acceptable third-party certifiers.

9. Will not contain or provide links to inappropriate content.

10. Clearly disclose to users their customer service support options and privacy policy.

11. Agree to have at least one link to the IRS.

C. The Consortium will take reasonable steps to publicize the criteria for Consortium participation. The Consortium will provide to the IRS, on request, the names of unsuccessful applicants for Consortium participation and the reason for their rejection.

## V. Performance Standards

A. The IRS will have the Consortium web page ready by December 31, 2002. Consortium participants will have submitted their test returns produced by their software to the IRS sufficiently in advance of that date for testing. The IRS will not list on the Consortium web page a Consortium participant whose test returns have not been certified prior to the beginning of the filing season until that participant's test returns have been tested and certified.

B. The Consortium will make its best efforts to assure that Free Services by individual Consortium Participants are performed in accordance with the terms of the Agreement and in accordance with the offer made by the Consortium Participant. If the IRS determines a particular offering of Free Services is deficient or that Free Services are not being properly performed, it will notify the Consortium in writing of that fact, and provide information regarding corrective actions it believes are needed.

C. The undertaking by the Consortium under IV. A to offer Free Services at or above the 60% level shall apply only to January through April of each year (the primary tax filing season). Outside of the primary tax filing season, the Consortium shall encourage Consortium members to offer Free Services to the same extent that such services are offered by Consortium members for compensation.

D. The Consortium will be responsible for establishing its governance standards. These standards shall be in accord with applicable law and regulations. The standards shall be consistent with the Consortium performing its obligations under the Agreement and be designed to maximize participation of industry members while meeting the requirements of the Agreement.

E. IRS, in consultation with the Consortium, will develop an assessment process including usability performance measures to measure the extent to which the Agreement is accomplishing the objectives described in I., above. They will include at least:

1. Uptime and reliability through the tax season.

2. Delivery of the taxpayer to the Free Services in the minimum number of clicks consistent with usability design principles and the need to fully inform taxpayers about the free online services. From the site the taxpayer arrives at by clicking on the Consortium page's link to the Consortium Participant, until the taxpayer arrives at the Free Services, there will be no more clicks than required of such Consortium

Participant's paying customers, if applicable, consistent with usability design principles

## VI. Consortium Web Page Operation

A. The IRS will host and maintain the Web Page. The Consortium will submit to the IRS proposed content for the Web Page, and the IRS shall determine the final content to appear on the Web Page. The IRS will ensure that there are links from appropriate Government sites to The Web Page.

B. The design of the Web Page will conform to the following guidelines:

1. The Consortium will determine rank order placement of links to individual offerings in accordance with reasonable, objective criteria. Each listing of an offering will provide a description of the scope of, and eligibility for, free Services it offers.

1. The Web Page will provide a link to each Consortium Participant's Free Services entry using a minimum number of clicks.

2. No advertising will appear on the Web Page.

3. The Consortium will create and supply to IRS proposed content for the Web Page using existing IRS content management procedures.

4. The Web Page will be developed using usability design principles and will be updated based upon usability testing and other user feedback.

C. Taxpayers will be able to use Consortium Participants' software to prepare and electronically file their own personal income tax returns using proprietary processes and systems which such Participants host and maintain.

D. The Consortium will promptly notify the IRS of any planned or unplanned unavailability (i.e., downtime) of an offering that is anticipated to exceed five hours in duration. The IRS will annotate that offering's listing on The Web Page with a notice advising the public of the unavailability. The IRS may delist an offeror if its service remains unavailable for more than 24 hours, but shall re-list after restoration of availability; provided, however, if a Consortium Participant repeatedly has periods of such unavailability, the IRS shall be entitled to delist that Consortium Participant.

## VII. Marketing

A. The Parties will coordinate with each other their respective marketing of these Free Services to provide uniformity and maximize public awareness. Final decisions on the marketing campaign will remain with the IRS for IRS marketing expenditures

and with the Consortium and the Consortium Participants for their marketing expenditures.

B. The IRS will not endorse specific offerings or products, but will promote the availability of the Consortium's Free Services.

C. The Parties will work with the States to explore how the Agreement can support the states. Online tax preparation and e-filing of both federal and state returns can maximize benefits of this Agreement to taxpayers.

D. The Consortium understands that the IRS may continue to provide Consortium Participants or non-Participants Partners links from Government sites to electronic preparers and filers.

## VIII. Term of Agreement; Termination

A. The Agreement will have an initial term of three years from its effective date with automatic options to renew for successive two year periods. Representatives from the Parties will meet semiannually to review operation of the Agreement. The Parties will review the terms of the Agreement on an annual basis, and, upon mutual consent, can agree in writing to modify any provision of the Agreement.

B. Either Party may terminate the Agreement for cause if the other Party fails to comply with the Agreement, and such failure is not cured within thirty days of written notice of such failure from the other Party.

C. The IRS may terminate the Agreement without cause, such termination to be effective 12 months after the date of notice of such termination.

D. Should the IRS decide to offer Free Services to taxpayers the IRS shall notify the Consortium immediately. If the IRS gives such notice during the tax season (between January 1st and April 15th), or the last day of the filing deadline if that date is changed from April 15) of any year, the Consortium may, by written notice to the IRS, terminate the Agreement, effective on April 16th of that year. If the IRS gives such notice between April 16th and October 15th of any year, then the Consortium may, by written notice to the IRS other than during a tax season, terminate the Agreement, such termination to be effective no fewer than 30 days after the date of the Consortium's notice of such termination. If the IRS gives such notice between October 15 and December 31, the Consortium may by written notice immediately terminate the Agreement at any time on or before December 31.

**IX. Status of Term Sheet**

This is not the Agreement, and it is not intended to bind the parties. It is the parties' objective to reach an agreement

consistent with these terms in the near future.

For IRS

For IRS For the Consortium

[FR Doc. 02-19835 Filed 8-5-02; 2:58 pm]

**BILLING CODE 4830-01-P**

## **ELECTRONIC FILING**

### **PUBLIC STATEMENT**

Pamela F. Olson  
Assistant Secretary (Tax Policy)  
U.S. Treasury Department

SEPTEMBER 06, 2002

Free federal electronic filing of tax returns is pro-consumer and pro-taxpayer. Up to 78 million Americans stand to benefit from this free service. Taxpayers who e-file get their refunds twice as fast, reducing the need for tax refund loans, which often carry significant fees, and customer surveys consistently show that taxpayers prefer e-filing. Under this proposal, taxpayer privacy and security protections may actually be increased. Marketing of the free electronic filing service will be conducted to increase public awareness. However, federal tax laws strictly prohibit unauthorized marketing to taxpayers using a commercial tax preparation service. We look forward to reviewing all comments now that the public comment period has closed.

Pam Olson  
Acting Assistant Secretary (Tax Policy)  
U.S. Treasury Department

(As reported by Tax Analysts, Tax Notes Today, September 9, 2002, 2002 TNT 174-16)

October 1, 2002